IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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I.T.R. No.7 of 2000
Date of Decision:3.11.2006

Commissioner of Income-tax, Rohtak

.....Petitioner

Vs.

M/s Aggarwal Traders, Sonepat

.....Respondent

CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Shri Yogesh Putney, Advocate for the petitioner.

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ADARSH KUMAR GOEL, J.

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Delhi Bench, New Delhi, arising out of its order dated 23.9.1998 in I.T.A. No.4418/Del of 1992 in respect of assessment year 1990-91:-

> "Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was right in law in interpreting the provisions of section 271B and thereby confirming the order of ld. CIT (A), who deleted the penalty of Rs.92.699/- imposed u/s 271B of the Income-tax Act, 1961?"

We find that the issue stand covered against the revenue by the judgment of this Court in **Income-Tax Officer v. Kaysons India**, (2000) 246 ITR 489. After considering the relevant provisions, this Court observed at page 492:-

> "It is, therefore, evident that the default or failure to file the

return along with the audit report on or before the specified date is not hit by the provisions of section 271B. It is not the case of the Revenue that the assessee has failed to get the accounts audited or has failed to obtain the report of such audit in terms of section 44AB before the specified date. It is also evident that no return had been filed either under sub-section (1) of section 139 or in response to any notice under clause (i) of sub-section (1) of section 142 and as such there could possibly be no default of not furnishing the audit report along with such a non-existent return. The return under sub-section (1) of section 139 in this case could be filed up to November 30, 1990. However, the assessee had filed the return on December 31, 1990, which was a return filed under sub-section (4) of section 139 and this return was duly accompanied by the audit report obtained by the assessee in accordance with the provisions of section 44AB. Thus, according to us, the default for which penalty had been levied was not covered by the provisions of section 271B and the Commissioner of Income-tax (Appeals and the Tribunal were justified in holding that no penalty was leviable)."

Accordingly, the question is answered against the revenue and in favour of the assessee.

(ADARSH KUMAR GOEL)
JUDGE

November 3, 2006 **(RAJESH BINDAL)**
renu **JUDGE**